IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 366 of 2004
WITH
CIVIL APPLICATION NO. 8591 of 2004
WITH
CIVIL APPLICATION NO. 8650 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT MARITIME BOARD

Versus

GANGUBEN TAPUGIRI GOSWAMI

Appearance:

1. Appeal from Order No. 366 of 2004
MR PR NANAVATI for Appellant No.
MR HARSHIT S TOLIA for Respondent No. 1-3
MR AD OZA, GOVERNMENT PLEADER for Respondent No. 4-5
MR GM JOSHI for Respondent No. 6

2. Civil Application No. 8650 of 2004
MR RA MISHRA for applicant
MR PR NANAVATI for respondent

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/11/2004

ORAL JUDGEMENT

1. Sheer ignorance of law is writ at large on the face of the impugned order passed by the learned trial Judge.

2. This Appeal from Order is filed by Gujarat Maritime Board challenging the order dated 17th April 2004 passed by the 2nd Joint Civil Judge (S.D), Bhavnagar below Exh. 5 in Special Civil Suit No. 112 of 2003.

2. The respondents No. 1 to 3 herein has instituted Special Civil Suit No. 112 of 2003 for declaration and injunction to the effect that the act of the defendants of non-payment of amount as per land acquisition award declared in LAQ No. 1 of 2000 is arbitrary and illegal. In the said suit, a temporary injunction application was filed by the plaintiff and asked for interim mandatory injunction for payment of Rs.15 Crores. The plaintiff has filed the aforesaid suit on the ground that that property of the plaintiffs was acquired under the Land Acquisition proceedings for the benefit of Gujarat Maritime Board and an award was declared in their favour by the Land Acquisition Officer in LAQ Case No. 1 of 2000. According to the plaintiffs, as per the award, certain additional amount was required to be paid but the same was not paid, and, therefore, the suit was filed.

2. It is surprising to note that in the suit, at an interim stage, an order is passed by the learned Judge by which the application of the applicant is allowed and the defendant No. 2 [present appellant] is directed to determine the rent and interest, and make payment as per law and as per the award. The trial Court has also directed the defendants to implement the award in its true spirit. The said order is impugned in the present Appeal from Order.

3. Primafacie the suit is not maintainable because if the defendants are not implementing the award, it is open for the plaintiff to take out execution proceedings in accordance with law. Eventhough the suit is yet not decided and eventhough issues are not even framed in the suit, the trial Court has passed an order directing the Gujarat Maritime Board to determine the rent / interest

and make payment as per the award. Learned advocate Mr. Nanavati submitted that by the aforesaid order, the appellant Gujarat Maritime Board will be required to pay amount to the tune of Rs.15 Crores by way of interim order. He further submitted that even in a money suit, even though there may be primafacie case, the Court cannot ask the defendants to pay amount unless the claim is admitted by other side. This Court has its own doubt about the maintainability of the suit. Yet the learned trial Judge has shown the audacity to grant a mandatory order asking the Board to pay a substantial amount at an inter locutory stage.

4. On behalf of the Charity Commissioner, it is pointed that there is a serious title dispute involved, and yet the trial Court has passed such an order.

5. Learned Government Pleader, Mr. A.D. Oza vehemently submitted that in R.T.S. Proceedings, Deputy Collector, Mahuva has passed an order as back as in the year 1985 wherein it has been observed that a wrong entry was posted in the name of the original plaintiffs in revenue records, and they have no right to hold the land, and, therefore, the entry in favour of the present plaintiffs is set-aside by the aforesaid order of the Deputy Collector, Mahuva. Copy of the said order is shown to Mr. Tolia, but he submitted that since his client is not present, he is not in a position to comment upon the said order. However, learned Government Pleader, Mr. A.D. Oza, upon instructions from Mr. Manoj Makwana, RDC, Bhavnagar, who is present in the court, states that the said order has become final. However, this Court is not required to decide such question in this Appeal from Order, but one thing is certain that looking to the large amount involved in the proceedings, the trial Judge, without taking care of the consequences has passed an order in an interim application in a pending suit, whereby the Court granted a mandatory relief which ultimately results into practically allowing the whole suit at an interim stage. Mr. Nanavati submitted that by the said order, Gujarat Maritime Board would be required to pay Rs.15 Crores.

6. Law regarding granting of mandatory injunction is well settled and it can be granted only in rarest of rare cases. The facts of the present case clearly indicate that this is not a case where such mandatory injunction could have been granted by the trial Judge. The learned trial Judge has passed a reckless order. Mr. A.D. Oza submitted that there is a serious dispute about title between the Trust and the plaintiffs and the plaintiffs

are 'poojaris' and the entire amount awarded for acquisition of the land has been withdrawn by them [except Rs.10 lakhs which is lying with the Reference Court].

7. In my view it is a case in which the Government must hold appropriate inquiry to find out as to how, without looking at the revenue records such a large amount to the tune of Rs.2,70,85,632/_ came to be awarded, as to why no appeal was preferred and as to why the entire amount awarded has been permitted to be withdrawn. Learned Government Pleader Mr.A.D. Oza stated before the Court that the Revenue Department will hold a detailed inquiry into the matter and take appropriate actions against the erring officials, if any. The said statement of Mr. A.D. Oza is recorded. The omission/commission on the part of the officers of GMB may also be brought within the ambit of the inquiry.

8. It is required to be observed that when there is a dispute regarding title, more particularly in a matter pertaining to land acquisition, appropriate remedy is provided under the Land Acquisition Act. Mr.Tolia submitted that some proceedings are pending before the Charity Commissioner. Mr. Tolia submitted that the plaintiffs may be permitted to prosecute appropriate remedy qua the title of the land.

9. Mr.Tolia further submitted that the plaintiffs may be permitted to withdraw Special Civil Suit No. 112 of 2003 pending before the 2nd Joint Civil Judge, Senior Division, Bhavnagar, as his client would like to take all available contentions before the Charity Commissioner or before other appropriate forum in connection with the adjudication of title. Under the circumstances, the respondents No. 1,2 and 3 herein, the original plaintiffs, are accordingly permitted to withdraw Special Civil Suit No. 112 of 2003 pending before the 2nd Joint Civil Judge, Senior Division, Bhavnagar. The said suit stands disposed of from the file of the trial Court. Writ of this order be sent to the concerned Court forthwith for passing appropriate formal orders in the suit disposing it of as withdrawn from the file of the learned trial Judge.

10. Since the original suit is withdrawn, the impugned order dated 17th April 2004 passed by the 2nd Joint Civil Judge (S.D), Bhavnagar below Exh. 5 in Special Civil Suit No. 112 of 2003 does not survive.

11. Since the original plaintiffs have shown

willingness to withdraw the suit, and the suit is accordingly permitted to be withdrawn, I am not observing any further with regard to the present suit. In my view, the nature of the impugned order is such that it requires scrutiny on the administrative side, and a copy of this order is, therefore, directed to be placed before the Registrar of this Court for placing it before the concerned Unit Judge. Suffice it to say that the concerned Judge who passed the impugned order be put to caution to be more careful in future while passing such orders. When such type of mandatory orders are passed, the consequences of such orders must be kept in mind. By passing the aforesaid order, practically the whole suit is allowed at an interim stage, without a full fledged trial, and hardly anything remains in the suit to be decided.

12. Mr. Nanavati submitted that eventhough there are serious disputes regarding the title of the suit land, fraudulent means appears to have been resorted to by the original plaintiffs and as a result thereof, the entire amount awarded to them has been withdrawn. He further submitted that this Court has power to direct the original plaintiffs to refund the amount. However, I am of the view that it will not be proper to pass such an order in this Appeal from Order, and it will be open to the appellant and/or the State to initiate appropriate proceedings for recovery of the amount in accordance with law, and it will be open for the parties to lead evidence and contest such proceedings, if initiated, in accordance with law.

13. Mr. Nanavati further submitted that appropriate orders may be passed to invest Rs.10 lakhs lying with the Reference Court in connection with the award in question. It is directed that the said amount of Rs.10 lakhs shall be invested in a Fixed Deposit in the name of the Nazir of the Court, initially for a period of three years, which shall be renewed periodically till the LAQ proceedings and the dispute qua the title of the land are finally decided.

14. In view of aforesaid order permitting withdrawal of the suit, the Appeal from Order does not survive and it stands disposed of accordingly. Consequently, the two Civil Applications also does not survive and both the Civil Applications stand disposed of accordingly.

mathew [P.B.MAJMUDAR, J.]